MICHIGAN WASTE Service

March 22, 2004

Mr. George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604

RE: USEPA 40 CFR Part 62 Federal Implementation Plan for HMIWI
Michigan Waste Services, L.L.C.

Dear Mr. Czerniak:

This letter is in reply to your January 28, 2004 letter (AE-17J) regarding Reporting Schedules for Michigan Waste Services Incinerator. Michigan Waste Services, L.L.C. appreciates your approval of the annual and semi-annual reporting schedule proposed and requested in our December 2, 2003 letter.

You raised some additional issues in your letter. Even though Michigan Waste Services was not instructed to respond to those issues, it wishes to comment on these concerns raised in your letter. We believe this to be part of the company's good faith compliance efforts.

As you know, Michigan Waste Services, L.L.C. (MWS) operates a hospital/medical/infectious waste incinerator (HMIWI) in Hamtramck, Michigan. As such is it is subject to 40 CFR Part 60, Subpart Ce. This facility is currently subject to the record keeping requirements of the Federal Implementation Plan (FIP) provisions of 40 CFR Part 62, Subpart HHH for its operation, because:

- the State Implementation Plan (SIP) for Michigan has not been approved by EPA as of the date of this letter, and
- the facility currently only combusts pathological waste, chemotherapeutic waste, low-level radioactive waste and/or governmental waste requiring destruction, although still permitted to combust hospital/medical/infectious waste.

This facility operates under an air use permit to install issued by the Michigan Department of Environmental Quality (MDEQ). This facility has received an administratively complete application shield under the Part 70 regulations as a Title V source, however, a Renewable Operating Permit has not been issued to date. Accordingly, MWS must communicate FIP implementation and compliance matters with the EPA because, prior to the issuance of a part 70 permit and absent formal delegation, the State of Michigan is not authorized to implement or enforce the requirements of the Subpart HHH standards.

In your letter you state that you are concerned that for purposes of compliance with the Federal Plan, the initial performance test was conducted more than 180 days after the alleged August 15, 2001, final compliance date, allegedly in violation of the Federal Plan. Because of the following reasons, MWS believes that the final compliance date for its HMIWI was September 15, 2002 and respectfully disagrees that the final compliance date for its HMIWI was August 15, 2001:

- The applicable Federal rule at 40 CFR §60.39e provides that the compliance date for Subpart Ce can be delayed to September 16, 2002 by state plan.

- The Michigan state plan for Subpart Ce provided at R336.1933(3)(a) (Rule 933) that a facility which installs air pollution control equipment to comply with the provisions of the Michigan rule "shall comply with all the provisions of this rule by September 15, 2002" and complete initial performance testing within 180 days after the final compliance date.

- On December 22, 1999 the facility entered into a Stipulation For Entry Of Final Order By Consent ("Consent O rder") which required, among other things, that mercury emissions be controlled through the use of air pollution control equipment.

- The Consent Order was entered into to administratively resolve allegations by the Michigan Department of Environmental Quality ("MDEQ") Air Quality Division ("AQD") and the form er Wayne County Department of Environment Air Quality Management Division ("W CAQMD") that the facility emitted mercury in excess of allowable limits and conditions as specified in Permit to Install No. 973-91. The minimum life of the Consent Order was 3 years from the effective date. (Note: The limit in the permit at the time was 3 ug/dscm @ 7% oxygen, whereas, the Federal Standard for New and Existing sources is 550 ug/dscm @ 7% oxygen. The 1997 test results showed 186 ug/dscm @ 7% oxygen.) In part, Paragraph 13.b. of the Consent Order reads as follows:

The MDEQ-AQD and the WCAQMD have made the following allegations through the issuance of the following letters and Notices of Violation:

b. United States Environmental Protection Agency Notice of Violation No. EPA 5-98-MI-14, dated April 21, 1998; State LOV dated February 5, 1998; and WCAQMD NOV APC 52603 – On November 7 and 8, 1997, the Company permitted operation of the medical waste incinerator in such a manner that the State Implementation Plan was violated, conditions of State of Michigan Permit to Install No. 973-91 and Wayne County Permits Nos. C-9435 through C-9438, dated March 4, 1992, were violated by exceedance of permitted mercury limits.

Under the Compliance Program and Implementation Schedule of the Consent Order the facility agreed to implement a Mercury Waste Management Plan aimed at reducing mercury containing waste, achieve the required control of mercury as required by Permit to Install No. 073-91A, and use activated carbon injection to control mercury emissions. Furthermore, paragraph 19 requires a minimum of 6 semi-annual performance tests for mercury over a three year period.

- The permit issued under the Consent Order contained medical waste throughput limits and baghouse inlet temperature limits without the necessity of conducting a new performance test, thereby recognizing the validity of prior tests as fulfilling the performance test requirement.

- The facility had a continuous emission monitor for CO emissions, and therefore no performance test was required for this parameter.

- HCl emissions were tested July 1997, February 2000, October 2001, and again in October 2002. The State of Michigan was informed of the sorbent flow requirements established by those tests.

- Before the expiration of the minimum three year compliance plan in the Consent Order, Rule 933 was adopted in Michigan and set forth an alternate timeline for compliance with a much more stringent mercury limit than found in Subpart Ce. Rule 933 states that within 36 months of the effective date of the state plan or federal implementation plan, whichever is more stringent, mercury emissions shall not exceed 3.0 micrograms per dry standard cubic meter, or an 85 percent reduction with the emission not exceeding 50 micrograms per dry standard cubic meter after the 85 percent reduction.

- To date, the Michigan SIP submittal and Rule 933 remains unapproved by the EPA, although Rule 933 remains effective in Michigan.

- Nonetheless the parties to the Consent Order believed the Michigan Rule 933 would be applicable to performance testing requirements for mercury, but for a 50 microgram limit rather than the 550 microgram limit of Subpart Ce. [Remember the permit already limited the relevant parameters].

- Therefore the Consent Order and Compliance Plan were treated as having satisfied the delay provisions of Rule 933 and Subpart Ce in order to allow maximum time for effective controls to be developed, including mercury reduction in the medical waste stream.

- Since the Michigan SIP is not approved, a later date for initial performance testing is appropriate, according to the USEPA Technology Transfer Network Air Toxics Website, wherein the HMIWI Questions and Answers Document is located. Under the COMPLIANCE, PERFORMANCE TESTING, MONITORING AND INSPECTIONS section, question number 94 asks *when are units required to perform initial testing in respect to the timeline for State Plans?* The corresponding, answer is as follows: *Units are required to perform initial performance test as scheduled in the State Plan but no later than 3 ½ years after approval of the State Plan or 180 days after September 15, 2002 (whichever is earlier).*

- Under the circumstances the facility had until 180 days after September 15, 2002 to complete initial performance testing. It was completed in October of 2002, well within the 180 days.

- Still believing the State Plan was applicable and that Michigan would be implementing Subpart Ce through Rule 933, the facility submitted its performance test results to the Michigan Department of Environmental Quality on December 2, 2002, less than sixty days after the completion of the October 2002 testing.

- Later the facility realized that Michigan's Rule 933 was not only not approved, but under U.S. EPA guidance was "unapprovable". The information was therefore submitted to you at U.S. EPA on January 22, 2003.

- In accordance with §62.14481, MWS submitted a complete Part 70 Title V permit application prior to September 15, 2000, and the ROP application shield is in effect.

- In accordance with §62.14420 through §62.14425, two MWS personnel successfully completed operator training and qualification prior to August 15, 2001 and have successfully completed the annual refresher courses, as required.

- In 1997, the facility successfully demonstrated compliance with all of the applicable emission limits specified in the federal emission guidelines, dated September 15, 1997, and the federal implementation plan, dated August 15, 2000.

The foregoing explanation sets forth the good faith efforts of the facility to meet the deadlines as it understood them to be under the Consent Order, Rule 933, and the Federal Implementation Plan. If the explanation is confusing it reflects the confusion that existed as the facility had a permit, which was later modified by Rule which was never approved by U.S. EPA and yet the State of Michigan claimed delegated authority.

In your letter you also state that you are also concerned that for purposes of compliance with the Federal Plan, MWS submitted the initial performance test report on January 22, 2003 and, was submitted more than 60 days after performing the initial performance test, which is the deadline specified in the Federal Plan.

As stated in the January 22, 2003 MWS letter presenting the initial performance test report, the re-established values for the site-specific operating parameters, and the waste management plan (which included the aforementioned mercury waste management plan, among other things), the information included in the January 22, 2003 submittal had been previously submitted to the MDEQ AQD on December 2, 2002, which was within 60 days of completing the last element of the initial performance testing, that being compliance with the extremely stringent mercury limit imposed on this facility. This was at a time when the MDEQ/AQD was asserting that it had implementation and enforcement authority for Subpart Ce and/or the FIP.

Subsequently, MWS realized that the MDEQ AQD does not have enforcement authority for Subpart Ce and/or the FIP and promptly submitted the required report to Mr. Gahris and the EPA on January 22, 2003.

Finally, your letter indicates that EPA is concerned that the submitted waste management plan addressed mercury emissions, but does not examine opportunities for recycling or reduction of wastes, such as paper, plastics, cardboard, glass, and batteries. The January 22, 2003 submittal presented the MWS Waste Management Plan which includes the company's Medical W aste

Management Plan (applicable to all customers' m edical waste handled at the site) and the Mercury Waste Management Plan. The MWS Medical Waste Management Plan far exceeds the expectations specified in 62.14431. Reference is again made to the USEPA Technology Transfer Network Air Toxics Website, wherein the HMIWI Questions and Answers Document is located. Under the WASTE MANAGEMENT PLANS section question number 103 asks *are hospitals that are operating as de facto commercial treatment facilities required to account for receipt and handling of medical waste accepted from off-site generators in their Waste Management Plans?* The corresponding answer states that *facilities operating commercial HMIWI have little control over the wastes that are accepted from offsite locations. This is one reason why the requirements for Waste Management Plans are somewhat open-ended. One thing that commercial facilities may be able to do in an attempt to control the types of waste that are sent to the incinerator is to advertise to their customers what types of waste could be recycled and what types of waste should not be sent to the incinerator. Thus, a commercial facility could indicate its strategy for advertising in its Waste Management Plan.*

MWS trusts that this letter sufficiently addresses the concerns raised in your January 28, 2004 letter and respectfully requests your written response to this assessment relative to the federal implementation plan. Please be aware that MWS may resume operation as a HMIWI combusting all types of hospital and medical/infectious wastes at any time.

If you have any questions regarding this letter, please contact me at 708-474-4360, or our consultant Mr. Dave Warner of ASI Environmental Technologies at 231-845-0371.

Respectfully Yours,

MICHIGAN WASTE SERVICES, L.L.C.

Norman Aardema
President

Enclosure

cc: Jeffrey Gahris, EPA ✓
Bruce Goodman, Varnum Riddering Schmidt & Howlett
Dave Warner, ASI